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Japan - Commerc. Treaty VI
File - Japan

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(R)

MEMORANDUM

May 29, 1953

To: L - Mr. Phleger

From: L:SM - Mr. Leddy

Subject: The Professions Clause of the FCN Treaty with Japan

I believe it might be useful, in connection with the discussion you plan to have with the Secretary on the subject, for me to recapitulate our views on the professions clause.

We believe that the retention of the professions clause would be in the interests of the United States.

To begin with, we believe that the professions clause is a useful and important provision of the treaty, and that it justifies the strong support of the Department. It is helpful to American investors overseas, who frequently want the services of professionally-trained Americans, and it will even be more important as American overseas investment increases. In one form or another, it has appeared in our treaties for thirty years--ever since the negotiation of the 1923 treaty with Germany by Mr. Charles Evans Hughes.

The clause has had support from some segments of the American public and objections from others. The American Institute of Accountants has supported it. On the other hand, representatives of the bar (although not the American Bar Association as such) have objected to the provision.

This provision will probably run into opposition in the Senate. In the end, if the Senate adopts the treaty, we assume they will do so with a reservation as to the particular provision. But this seems to us to be a better outcome than attempting to renegotiate the clause with Japan and Israel, the two countries involved, before the treaty is submitted. The former course seems preferable for the following reasons:

First, it is not at all clear how much of the clause the Senate will insist should be omitted. The Senate may insist only upon the omission of lawyers from the clause or may insist on omission of the entire clause. If we guessed the Senate's desires erroneously and negotiated with foreign countries on an erroneous assumption, we would end up with having deleted either too much of the clause or not enough.

Moreover,

Moreover, we are inclined to think that the Japanese would much more readily accept the omission of part or all of the clause pursuant to a Senate reservation, reflecting a general shift in United States policy, than pursuant to an Executive request. Both smack of discrimination, of which the Japanese are hypersensitive, but the latter more than the former.

Finally, we are reluctant to open renegotiations either with Japan or Israel, before the Senate had acted on the treaties. In our judgment, the re-opening of negotiations on this point with the countries concerned may lead to the re-opening of issues other than the professions clause. Some of the provisions in the treaty were accepted by the other side with considerable reluctance and might well be re-opened by them whenever an opportunity presented itself.

For these reasons, we think the Department should support the treaties as they stand and accept such reservation as the Senate sees fit to adopt, as gracefully as we can.

EDT:RVernon:lgm